

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

VS.

No. 07-20071

MICHAEL D. MASON,

Defendant.

TRANSCRIPT OF CHANGE OF PLEA

BEFORE THE

HONORABLE S. THOMAS ANDERSON

SEPTEMBER 24, 2008

MARK S. DODSON
OFFICIAL COURT REPORTER
167 N. MAIN STREET - SUITE 422
MEMPHIS, TENNESSEE 38103

UNREDACTED TRANSCRIPT

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- A-P-P-E-A-R-A-N-C-E-S -

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For the Plaintiff:

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For the Defendant:

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1 SEPTEMBER 24, 2008

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3 **THE COURT:** Let's see, this is the matter of
4 United States versus Michael D. Mason, 07-20071.

5 **MR. CANALE:** Afternoon, Your Honor.

6 **THE COURT:** How are you this afternoon?

7 **MR. CANALE:** Good.

8 **THE COURT:** Are you Mr. Michael Mason?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** Mr. Mason, I've been advised that
11 you have decided to enter a plea of guilty to --

12 Which counts, General?

13 **MR. HARVIEL:** Count 4, if Your Honor please.

14 **THE COURT:** -- to Count 4 of the indictment
15 that was returned looks like in March on March the 7th of
16 last year; is that correct?

17 **MR. HARVIEL:** Yes, sir.

18 **MR. CANALE:** Yes.

19 **THE COURT:** Mr. Mason, I'm going to be asking
20 you some questions. I'm going to ask the clerk to swear
21 you in, and then I'll proceed with the questions.

22 **THE CLERK:** Please raise your right hand.

23 **MR. HARVIEL:** To the extent that he can, Your
24 Honor. For the record, he is shackled at the moment.

25 **THE COURT:** I understand.

1 (The defendant was duly sworn) .

2 **THE COURT:** Mr. Mason, I'm going to be asking
3 you some questions. If you don't understand the question
4 or you need for me to repeat it, let me know. Also if
5 during the questioning you would like to confer with
6 Mr. Harviel concerning any of the questions that I ask
7 you, you can do that; do you understand?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** How old are you, Mr. Mason?

10 **THE DEFENDANT:** 51.

11 **THE COURT:** And how far did you go with your
12 education? How much education did you have?

13 **THE DEFENDANT:** College degree.

14 **THE COURT:** When was that.

15 **THE DEFENDANT:** '79.

16 **THE COURT:** 1979. What was your degree in?

17 **THE DEFENDANT:** Marketing management.

18 **THE COURT:** Are you currently taking any kind
19 of medication that would interfere with your ability to
20 understand what we are doing here today?

21 **THE DEFENDANT:** No.

22 **THE COURT:** You do know why you are here; is
23 that correct?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** And you understand that you are

1 entering a plea to the indictment that was returned
2 against you last year as I mentioned?

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** Have you had an opportunity to
5 discuss the case fully with Mr. Harviel?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Has he explained to you what your
8 options are as far as going to trial or entering a plea
9 and what the government would be required to prove if you
10 went to trial?

11 **THE DEFENDANT:** Yes.

12 **THE COURT:** Are you satisfied with
13 Mr. Harviel's representation?

14 **THE DEFENDANT:** Yes.

15 **THE COURT:** Okay. Mr. Mason, do you
16 understand that under the constitution and laws of the
17 United States you are entitled to a trial by jury on the
18 charges contained in the indictment?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** Do you understand that at the
21 trial you would be presumed to be innocent and the
22 government would have to prove that you were guilty by
23 competent evidence beyond a reasonable doubt?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** Do you understand that at the

1 trial the government would have to put on witnesses here
2 in the courtroom in your presence and that your attorney
3 would have the right and opportunity to cross-examine
4 those witnesses?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** Do you understand also that your
7 attorney could object to any evidence offered by the
8 government that your attorney thought was improper, and
9 that you would have the right to offer evidence in your
10 own behalf?

11 **THE DEFENDANT:** Yes.

12 **THE COURT:** Do you understand that at the
13 trial you would have the right to testify if you desired
14 to do so, but you could not be made to testify?

15 **THE DEFENDANT:** Yes.

16 **THE COURT:** And if you chose not to testify,
17 that could not be used against you in any way?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** Do you understand that if you
20 plead guilty today and I accept your plea, that you will
21 be giving up your right to trial and all the other rights
22 we've just reviewed?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** And also you'll be giving up your
25 right to appeal any conviction in this matter?

1 **THE DEFENDANT:** Yes.

2 **THE COURT:** Do you understand that there will
3 not be a trial and that I will sentence you after
4 considering what we refer to as a presentence report?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** Okay. General, would you review
7 the indictment for the record?

8 **MR. CANALE:** Yes, Your Honor.

9 Your Honor, Count 4 of the indictment states
10 as follows; states that during the calendar year 2003
11 Michael Mason had received taxable income in the
12 approximate sum of \$240,359, that upon such taxable
13 income, there was owing to the United States of America
14 an amount of tax of approximately \$54,649; that well
15 knowing and believing those facts, Mr. Mason on or before
16 April 15th, 2004, in the Western District of Tennessee,
17 willfully attempted to evade and defeat said income
18 something tax due and owing by him to the United States
19 of America for said calendar year 2003 by failing to make
20 an income tax return on or before April 15th, 2004 as
21 required by law to a proper officer of the Internal
22 Revenue Service by failing to pay the Internal Revenue
23 Service said income tax by concealing and attempting to
24 conceal from all proper officers of the United States of
25 America his true and correct income and by filing a false

1 form W4, all in violation of Title 26, United States Code
2 Section 7201.

3 **THE COURT:** Go ahead, General, if you would
4 review the penalty.

5 **MR. CANALE:** Your Honor, that carries a term
6 of imprisonment of not more than five years in prison, a
7 fine of not more than \$250,000, a term of supervised
8 release of \$100 -- excuse me -- a special assessment of
9 \$100, term of supervised release of three years.

10 **THE COURT:** Mr. Mason, you just heard the
11 attorney general describe the contents of Count 4 of the
12 indictment. Did you understand that that's what you were
13 charged with?

14 **THE DEFENDANT:** Yes.

15 **THE COURT:** And did you understand his
16 explanation of what was contained in Count 4 of the
17 indictment?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** Okay. Mr. Haley, pass this to
20 Mr. Harviel.

21 Mr. Mason, I'm passing you what has been
22 presented to the Court as a plea agreement. If you would
23 look at the last page.

24 Is that your signature?

25 **THE DEFENDANT:** Yes.

1 **THE COURT:** And when did you sign that
2 document?

3 **THE DEFENDANT:** 22nd of this month.

4 **THE COURT:** Okay. Did you have an
5 opportunity --

6 Pass it back up, Mr. Harviel.

7 Did you have an opportunity to discuss the
8 document in detail with Mr. Harviel before you signed it?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** And did he explain all the
11 contents and all the terms of the agreement to your
12 satisfaction?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** Okay. General, review the terms
15 of the plea agreement for us.

16 **MR. CANALE:** Your Honor, the plea agreement
17 sets out in paragraph 1 that Mr. Mason would plead guilty
18 to Count 4 of the indictment. The United States has
19 agreed to dismiss the remaining counts at sentencing.
20 The United States has also agreed to dismiss the
21 indictment against Mr. Mason in Case Number 08-20129,
22 which is pending in front of Judge McCalla. It's a
23 failure to appear indictment.

24 Paragraph 2 states that Mr. Mason has been
25 informed of the nature of these charges and elements of

1 the charges which must be proved by the government beyond
2 a reasonable doubt before he could be found guilty. By
3 voluntarily pleading guilty, he is knowingly waiving and
4 giving up his constitutional right to plead not guilty,
5 to compel the government to prove his guilt beyond a
6 reasonable doubt, not to incriminate himself, to confront
7 and cross-examine the witnesses against him and to have
8 the jury or judge determine his guilt on the evidence
9 presented and other constitutional rights which he would
10 have in a criminal case.

11 Paragraph 3 states that the parties have
12 agreed that the tax loss in this case will include the
13 relevant conduct from tax years 2000 through 2004, which
14 is approximately \$229,064.48. Mr. Mason has agreed to
15 make restitution to the Internal Revenue Service in that
16 amount. The parties have agreed that this provision,
17 that is, the restitution provision is not intended to
18 effectuate a compromise of his civil tax liability and
19 that the IRS may proceed in accordance with established
20 procedures and to the extent allowed by law against
21 Mr. Mason civilly for any additional income tax, interest
22 or penalties that it determines may be due. Likewise,
23 the agreement does not diminish any rights that Mr. Mason
24 may have under the Internal Revenue Code to oppose the
25 Internal Revenue Service civil deficiency determinations

1 and he may contest these determinations to the extent
2 provided by law.

3 Paragraph 4 states that the parties have
4 agreed that Mr. Mason's conduct, a failure to appear,
5 will result in a two-level enhancement pursuant to 3C1.1
6 of the sentencing guidelines.

7 The United States has agreed to recommend that
8 Mr. Mason would be entitled to a three-point reduction
9 for acceptance of responsibility pursuant to 3E1.1 of the
10 sentencing guidelines, and the United States has further
11 agreed to recommend a sentence at the low end of the
12 applicable sentencing guideline range. If the Court does
13 not accept these agreements, the defendant will not be
14 allowed to withdraw his guilty plea.

15 Paragraph 5 states that the defendant has
16 acknowledged that he has not been coerced, threatened or
17 promised anything other than the terms of this plea
18 agreement described above in exchange for his plea of
19 guilty. He has discussed the terms of the plea agreement
20 with Mr. Harviel and is satisfied with Mr. Harviel's
21 advice and counsel and being aware of all the possible
22 consequences of his plea agreement, he has independently
23 decided to enter his plea of his own free will and
24 affirms this agreement by his signature on the plea
25 agreement.

1 **THE COURT:** Mr. Mason, the attorney general
2 has just reviewed the terms of the plea agreement. Were
3 those terms as you understood them to be?

4 **MR. HARVIEL:** If I may speak, Your Honor,
5 those are the terms that we had agreed to and signed off
6 on. There is no other -- there is nothing further to our
7 plea agreement. There is, however, a separate agreement
8 concerning Valerie Walker.

9 **MR. CANALE:** Yes.

10 **MR. HARVIEL:** That they are not going to
11 proceed against Valerie Walker. With that, that's
12 everything.

13 **THE COURT:** Okay. But that's not a part of
14 this agreement?

15 **MR. CANALE:** No.

16 **MR. HARVIEL:** That's a separate agreement.
17 Mr. Mason had asked me to speak and explain that.

18 **THE COURT:** All right.

19 **MR. CANALE:** We would agree with that, Your
20 Honor.

21 **THE COURT:** Mr. Mason, with the condition
22 that's just been stated by your attorney, as the
23 agreement was read, does it constitute the agreement as
24 you understood it?

25 **THE DEFENDANT:** Yes.

1 **THE COURT:** I want to particularly review two
2 portions of this. Under paragraph 4, it indicates that
3 that you will receive a two-level enhancement for a
4 previous failure to appear.

5 Do you understand what that means --

6 **THE DEFENDANT:** Yes.

7 **THE COURT:** -- Mr. Mason?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** You understand what it means when
10 it says a two-level enhancement?

11 **THE DEFENDANT:** Yes.

12 **THE COURT:** Also the government is
13 recommending that the Court give you a three-point
14 reduction for acceptance of responsibility. Do you
15 understand that it's entirely within the discretion of
16 the Court to decide what sentence would be appropriate in
17 your case?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** That the government can make
20 recommendations, but the Court is not obligated in any
21 way to accept those recommendations; do you understand?

22 **THE DEFENDANT:** Yes.

23 **THE COURT:** Okay. And, Mr. Mason, did you
24 sign this agreement freely and voluntarily?

25 **THE DEFENDANT:** Yes.

1 **THE COURT:** Did anyone pressure you or
2 threaten you or try to get you to sign this agreement
3 against your wishes?

4 **THE DEFENDANT:** No.

5 **THE COURT:** Okay. General, what's the factual
6 basis underlying the indictment?

7 **MR. CANALE:** Your Honor, had this case
8 proceeded to trial, essentially the proof would have
9 shown that the defendant, Mr. Mason, at the time period
10 set forth in the indictment was a pilot employed by
11 Federal Express, that he attempted to evade and defeat
12 the determination of his 2000 through his 2004 income tax
13 liabilities by failing to file income tax returns on the
14 due date of April 15th of the said tax years set out in
15 the indictment and by failing to make payment of the
16 outstanding tax liability. The defendant's conduct was
17 coupled with affirmative acts of evasion in furtherance
18 thereof including the filing of false W4 forms using
19 nominee entities and individuals and engaging in
20 substantial cash transactions to conceal the disposition
21 of his income.

22 Specifically, the proof would have shown that
23 this investigation began in approximately July 2005 upon
24 a referral from the Internal Revenue Service Examination
25 Division. The subsequent criminal investigation revealed

1 that Mr. Mason had failed to file income tax returns for
2 tax years 2000 through 2004. The proof would have shown
3 for these tax years defendant earned gross taxable income
4 above the statutory gross income amount requiring an
5 individual to file a federal income tax return.

6 The proof would have further shown that for
7 these tax years, Mr. Mason signed false W4 employee
8 withholding forms for each tax year claiming that he was
9 exempt from federal income tax withholding on his wages
10 thereby effectively ceasing any federal withholding from
11 his paycheck.

12 The proof would have further shown that once
13 Mr. Mason became aware of the investigation by the
14 Internal Revenue Service into his failure to file these
15 tax returns and his filing of the false W4s, that he
16 sought to evade the determination of his tax due by
17 committing several acts of evasion. First of all, we
18 would have shown that the defendant formed sham entities
19 which were used as nominees. The nominee entity names
20 that he formed were MDM-01, LGM-01 and CPM-01. Mr. Mason
21 opened bank accounts under these nominee names, utilized
22 these accounts for depositing his paychecks and also for
23 his personal expenditures.

24 Proof would further have shown that Mr. Mason
25 soon thereafter rented a postal mailbox in the name of

1 one of the nominee entities and changed the mailing
2 address for all the bank accounts that he had to this
3 post office box. Mr. Mason also went from having direct
4 payroll deposits from Federal Express to receiving paper
5 payroll checks which he would then deposit into the
6 nominee accounts or accounts that he also had opened in
7 either his wife or son's names. The proof would have
8 shown after the manual deposits were made of his
9 paychecks, substantially all the payroll checks would be
10 systematically withdrawn in U.S. currency.

11 The proof would have also shown another act of
12 evasion in that Mr. Mason employed an attorney here in
13 Shelby County to prepare legal documents making it appear
14 as if Mr. Mason's residence in Cordova was mortgaged to a
15 third-party company known as LGM-01, thus attempting to
16 shelter his residence from any potential IRS collection
17 efforts. The evidence would have shown that the entity
18 LGM-01 was a sham or nominee entity and that no money had
19 actually changed hands and that the lien that had been
20 placed against his residence was in effect nonexistent.

21 As a result of all these and other affirmative
22 acts of evasion, the proof would have shown that there is
23 a tax due and owing to the United States for tax years
24 2000 through 2004 of approximately \$229,064.48.

25 **THE COURT:** Mr. Mason, are the statements that

1 you have just heard correct and accurate?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** And as it relates to Count 4, did
4 you during calendar year 2003 have approximate income of
5 \$240,359, did you fail to timely file a tax return as
6 required by April the 15th of 2004?

7 **THE DEFENDANT:** Yes.

8 **THE COURT:** And did you in fact submit a false
9 W4 form in conjunction with those taxes?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** Okay. Anything else from the
12 government at this time?

13 **MR. CANALE:** Not that I can think of, Your
14 Honor.

15 **THE COURT:** Mr. Harviel, anything else from
16 you?

17 **MR. HARVIEL:** Not this afternoon, Judge.

18 **THE COURT:** All right. The Court finds that
19 there is a sufficient factual basis to support a
20 conviction of Mr. Mason in this case. It appears to the
21 Court that Mr. Mason understands his rights and that he
22 has willingly waived those rights. Further he has
23 acknowledged his guilt, and the Court is convinced that
24 he is represented by competent counsel in Mr. Harviel, so
25 I'm going to accept Mr. Mason's plea of guilty to Count 4

1 of the indictment.

2 Mr. Mason, the next phase will be the
3 preparation of what's called a presentence report. The
4 gentleman seated over to my right will be meeting with
5 you to obtain additional information from you about your
6 background, your employment, your family, your criminal
7 history, if there is any. Mr. Harviel can meet with you
8 if you would like for him to during that conference.
9 Basically it is for him to get sufficient information to
10 prepare a report for the Court. Then we will come back
11 in about 90 days, and I will sentence you at that time.

12 Do you understand?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** Mr. Haley, when are we coming
15 back?

16 **THE CLERK:** Wednesday, December 17th, 2 p.m.

17 **MR. HARVIEL:** That's fine.

18 **THE COURT:** Does that work for both of you
19 gentlemen?

20 **MR. HARVIEL:** Fine with me, Your Honor.

21 **MR. CANALE:** Yes, Your Honor.

22 **THE COURT:** December 17th at 2 p.m.

23 Thank you, Mr. Mason.

24 **THE DEFENDANT:** Thank you.

25 (Adjournment).

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C E R T I F I C A T E

I, Mark S. Dodson, do hereby certify that the foregoing 18 pages are, to the best of my knowledge, skill and ability, a true and accurate transcript from my stenotype notes in the matter of:

UNITED STATES

vs.

MICHAEL D. MASON

Dated this 24th day of June, 2019.

S/*MARK S. DODSON*
Official Court Reporter
United States District Court
Western District of Tennessee